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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

No Income Tax Reduction for Calendar Year 1930.

It seems to be reasonably certain, now, in view of statements and recommendations made to the Congress by President Hoover in his message on the budget and by Secretary Mellon of the Treasury Department in his annual report, that because of the state of the Government's finances there will be no reduction in the income tax rates applicable to individuals and corporations covering income of the calendar year 1930. In other words it is not probable that Congress will provide by special enactment for a reduction of the regular rates carried by the Revenue Act of 1928 for the income of the calendar year 1930 as it did for the income of the calendar year 1929.

Calling a Corporation a Fiction.

"But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members." Mr. Justice Holmes in the opinion of the United States Supreme Court in Klein vs. Board, etc., Docket No. 11, October Term, 1930, decided November 24, 1930. 51 S. Ct. 15. See under Kentucky at page 305 herein.

Kenneth Kingsley

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

Talks On Foreign Corporations

Among the dangers attendant on failure to qualify a foreign corporation doing business in a state is the individual liability of stockholders, directors, officers, agents or employees, which may arise by reason of contracts made by the unqualified foreign corporation in the foreign state. This individual liability may be imposed by statute or arise because of decisions of the courts.

In Colorado the statute provides that a failure to comply "shall render each and every officer, agent and stockholder of any such corporation, so failing herein, jointly and severally personally liable on any and all contracts of such company made within this state during the time that such corporation is so in default." (Section 2324, Compiled Laws, 1921.) North Dakota, (Sec. 5241, Compiled Laws, 1913) and Wyoming (Sec. 5449, Compiled Statutes, 1920) have similar statutes.

In a Florida case (Taylor v. Branham, 35 Florida 297) the court said: "It seems to be further well settled that where a number of individuals assume to act in a corporate capacity in a state where they have not been clothed with corporate existence and authority, they cannot there be recognized as a legally constituted corporation, though they may have been duly incorporated in another state, and that such persons, in the state where they assume corporate capacity, will be treated as and held to the responsibility of partners, both in courts of law and equity."

Section 4777 (Idaho Compiled Statutes 1919) provides that any and all officers, agents and representatives of an unqualified foreign corporation who shall make or attempt to make any contracts or agreements "shall be jointly and severally personally liable upon and for all such contracts and agreements as principal contractors."

Section 60 of Chapter 215, Indiana Laws of 1929, provides that the officers and directors of such a corporation shall be severally liable for the debts or liabilities of the corporation arising from the transaction of business in the State.

In Massachusetts every officer of an unqualified corporation is jointly and severally liable for all debts and contracts of the corporation contracted or entered into so long as such failure continues. (Section 5, Chapter 181, General Laws of Massachusetts, 1921.)

In Utah the statute makes any person acting as agent personally liable on any and all contracts made in the State by him for or on behalf of the corporation during the time it is in default. (Section 947, Utah Compiled Laws 1917.)

In Virginia (Section 3848 as amended by Acts 1926, Chapter 279) the officers, agents and employees of the unqualified foreign corporation are personally liable to the State for any fines imposed upon it and to any resident of the State having a claim against such corporation.

Domestic Corporations

Alabama.

Contract for commission to broker for finding one willing and ready to purchase all of corporation's property does not require vote by directors and stockholders as specified by statute for authority to sell such property. Action here is by a broker to recover the amount of commission, under a contract thereunto entered into between the broker and a corporation, for the finding of a customer ready, able, and willing to buy all of the corporation's property at an agreed price. Section 7036, Alabama Code, prescribes the conditions under which a corporation may sell all of its property—authorization by a vote of two-thirds of the board of directors and ratification by a vote of four-fifths in value of the capital stock at a stockholders meeting called to consider the matter. The Supreme Court of Alabama, one justice dissenting, reverses the judgment of the court below wherein the plaintiff took a nonsuit, sets aside the judgment of nonsuit, and remands. The court says: "As we understand, the suit is for a breach of a contract for a commission agreed to be paid by the defendant corporation for finding a purchaser ready, able, and willing to buy the defendant's property at an agreed price. It is not a contract for the sale of defendant's property as forbidden by section 7036 of the Code of 1923, except under the conditions thereby required." Justice Thomas, dissenting, is of the opinion that a commission contract such as is here involved is as much within the inhibition of the Code section referred to as a sale itself. Bobb Bell Realty Co. vs. Jones Valley Land Co., 130 So. 320. Harsh & Harsh, of Birmingham, for appellant. Huey, Welch & Stone, of Bessemer, for appellee.

Arkansas.

Stock having been issued for notes both the notes and the stock are void. An Arkansas corporation issued stock to several individuals promissory notes being given and accepted in payment, each note, except one, stating on its face that it was given in consideration of a certain number of shares. Subsequently a stock dividend was declared each of the individuals referred to above receiving his proportionate share of the new stock. Still later, the notes remaining unpaid, by resolution of the board of directors both the original stock and the stock-dividend stock issued to the individuals in question was sold, being bought in by the treasurer of the company for a nominal sum. The company then brought suits to recover the amount of the several subscriptions. Some of the shares had been transferred to a third party who intervened. The Supreme Court of Arkansas affirms the judgment below for the defendants and for the intervener. Article 12, § 8 of the Arkansas Constitution provides that no private corporation shall issue stock except for money or property, actually received, or labor done. The court says that the notes having been given in violation of this provision of the constitution were void; that the certificates of

stock issued in exchange for the notes were also void; and that there was no indebtedness to the corporation of the defendants. Various collateral questions are presented to the mind here in consequence of the decision but no one of these was considered by the court. Lepanto Gin Co. vs. Barnes et al., 31 S. W. (2d) 746. Caraway, Baker & Gautney, of Jonesboro, for appellant. Dudley & Dudley, of Jonesboro, for appellees.

California.

Business or Massachusetts Trusts under California law. The Supreme Court of California says: "The basic problem involved on this appeal involves the question as to whether the members or shareholders of Drascena Productions are personally liable on the promissory note executed by the president of that organization" which came into being by virtue of a declaration of trust under which "the parties thereto attempted to create a type of business organization usually referred to as a Massachusetts or business trust. Inasmuch as this court has never directly passed upon the validity and legal incidents of this type of business organization, * * *, it seems well that some definite statement of their legal status be made at this time." The court then proceeds to make such statement at considerable length. It gives the genesis of the "Massachusetts Trust," tells of the growth of use of the business trust in other states, discusses the question of ultimate control as determinative of the question whether an organization of this character is to be considered as a partnership or a true trust, notes that "some states have seen fit to regulate this form of business enterprise by statute," says that "in the absence of controlling authority to the contrary, we can see no reason why such organizations with their limited liability should not be recognized in this state," and "it follows that in this state, if, in fact, a true trust has been created, the shareholders are not personally liable on the obligations incurred by the trustees or the managing agents appointed by the trustees," and finds the instant trust (the provisions of the declaration are given in some detail) is a true trust and so that, here, "no direct personal liability attaches to the shareholders." Judgment reversed and a new trial ordered. Goldwater vs. Oltman et al., 292, P. 624. John W. Rankin, Kimball Fletcher, and Albee & Watkinson, all of Los Angeles, for appellant. Schweitzer & Hutton, Edward Winterer, and Winterer, Combs & Ritchie, all of Los Angeles (H. F. Clary, of Los Angeles, of counsel), for respondents.

Constitutional amendment making possible liberalizing of corporation laws adopted. At the November election the California voters adopted the proposed constitutional amendment removing certain constitutional limitations on the power of the legislature to provide for the formation, organization and regulation of corporations. The way is now open to the law making body, which meets this year, to liberalize the general corporation laws of the state, including the complete elimination of the present onerous provisions relative to stock-

holders liability for the debts of their corporation made necessary, heretofore, by the constitution.

Colorado.

Right of stockholder to examine books of his corporation is not absolute. The Supreme Court of Colorado reverses the court below which granted a writ of mandamus to compel the defendants to permit petitioner stockholder to examine the books of his corporation. The court was divided; the majority opinion is long; one of the judges who dissented in part, expresses his views. The court says that it has reviewed the question at some length because of its importance. The present holding is "an abandonment of our previous ruling" which was in effect that the stockholder's motive in seeking opportunity to examine is immaterial. Remarking that the subject has been litigated in every state in the Union but without uniformity of decision, the court says that "The trend, however, is toward a reversion to the common-law rule, which makes motive and good faith material in an application for inspection of corporate books, etc." The earlier decisions now "abandoned" were rendered at a time the sections (§ 2267 and § 2268, C. L. 1921) of the Colorado law giving stockholders the right to examine the books made no reference to the seeking of an enforcing writ from a court. Section 2268 (authorizing examination of the stock books of certain corporations), since amended, now provides that on application for a writ of mandamus or other order the court may refuse to issue if not convinced of good faith, etc. The court's reversal here is actually on two grounds: (1) that the earlier decisions were wrong, in general principle, and (2) that the discretion now stated in terms in § 2268 (stock records only), applies equally to § 2267 (all the books) which is silent as before as to any application to a court for a writ of mandamus or other order, such section having been similarly amended "by implication." Dines et al. vs. Harris, 291 P. 1024. Dines, Dines & Holme and Robert E. More, all of Denver, for plaintiffs in error. Lewis & Grant and F. W. Sanborn, Jr., all of Denver, for defendant in error.

Example of failure of corporation to file sufficiently complete annual report rendering officers and directors liable for corporation's debts for preceding year. The statutes of Colorado provide that if a corporation fails to file an annual report, as thereby required, the officers and directors of the corporation are jointly and severally and individually liable for all debts contracted by the corporation during the year next preceding the time when such report should have been filed. In the instant case the Supreme Court of Colorado, affirms the judgment below for the plaintiff (creditor company) against defendant directors of a debtor company which filed its annual report on March 1, 1928 (it was sworn to on Feb. 25, 1928), the law requiring filing within 60 days after January 1, 1928. Several of the questionnaire items called for by the report blank "remain unanswered" and so "the report was a nullity." One subdivision of the report blank calls for information to show the financial condition of the company "at

the date of filing such report." The answer to this question was "Balance sheet as of Dec. 1, 1927, attached." Such balance sheet was attached. The court "again takes occasion to disapprove the method used in giving the information" under this item. "This answer did not furnish the information required, nor does it purport to give the financial and other conditions of the corporation on March 1, 1928, the date of filing the report." To the extent that the court's opinion in Carey vs. Aurand, 74 Colo. 186, 188, 219 P. 1069, indicates a presumption that the financial condition of the company there involved was the same on Feb. 26, 1921, the date on which its report was filed as it was on Dec. 31, 1920, "it is expressly disapproved." "The statute means exactly what it says, and should, if officers and directors hope to escape a liability for corporate debts, be strictly followed." Bergren et al. vs. Valentine Hardware Co., 291 P. 1038. Albert G. Craig and Charles F. Brannan, both of Denver, for plaintiffs in error. Goss & Hutchinson, of Boulder, for defendant in error.

Georgia.

Acceptance of stock in another corporation in partial settlement of an account, by a corporation not specifically authorized to hold stock of other corporations is not ultra vires the corporation. Into the merits here we do not go. The Court of Appeals of Georgia, Division No. 1, says: "The J. L. Young Company was a private corporation engaged in the grocery business for profit. Since it had the right to sell on credit, it necessarily had the power to collect its bills. In the event that it could not collect its bills in money, we see no reason why it could not accept property other than money either in full or partial settlement of accounts due it. In the case at bar a suit against Mr. Minchew failed to produce the money. We see no legal reason why, in such a case, J. L. Young Company did not have a legal right to settle its account for bank stock and good checks, if it saw fit to do so. * * * Our conclusion is that the act in question was not ultra vires." J. L. Young Co. vs. Minchew, 155 S. E. 356. Slater, Moore, Oberry & Wheless, of Douglas, for plaintiff in error (the company). L. E. Heath and Mingledorff & Gibson, all of Douglas, for defendant in error.

Kansas.

Purchaser, from corporation having no permit under Blue Sky Law, of shares of stock may recover purchase price from officers, the selling company's agents. Plaintiff brought this action against the president, secretary, and treasurer of a Kansas corporation, not licensed under the Kansas Blue Sky Law to sell its stock, to recover the purchase price of certain shares of stock, speculative securities, of the corporation purchased by her from the corporation. The treasurer accepted her checks in payment for the stock and deposited them to the account of the corporation; certificates signed by the president and secretary, evidencing the shares, were issued to her. The company was not successful, its assets were disposed of to pay debts, and the stock proved to be valueless. The Supreme Court of Kansas affirms the judgment

below for plaintiff. "Defendants contend that they were not instrumental in making the sale, and an officer or director of a corporation is not subject to liability for sale of speculative securities in violation of the Blue Sky Law, unless he actively participated in making the sale." The Court says that "plaintiff was a purchaser, as distinguished from a subscriber," that "the treasurer received the money, and the president and secretary made the delivery," and finds that "whether or not what defendants did constituted active participation in the sale their conduct bore such relation to the unlawful sale that they must restore to plaintiff the price she paid for the shares sold to her." Daniels vs. Craiglow et al., 292 P. 771. H. W. Hart, Glenn Porter, Enos E. Hook, Edward H. Jamison, and Getto McDonald, all of Wichita, for appellants. O. A. Keach of Wichita, for appellee.

Minnesota.

Stockholder's liability on stock sold (issued) to him in violation of Blue Sky Law. Action is by receiver of an insolvent corporation against a stockholder on account of his so-called constitutional double liability. The sale of the stock (1 share, $100 par value) to the defendant stockholder was in violation of the Minnesota Blue Sky Law, neither the corporation nor its salesman agent having been licensed by the securities commission. No steps were ever taken by the stockholder to rescind his subscription; not until this action was commenced did he advance the claim of violation of the Securities Act. He had paid but a small part ($16) of the subscription price and no certificate had been issued to him but he was listed as a shareholder on the corporation's books. The Supreme Court of Minnesota affirms the judgment below in plaintiff-receiver's favor "for $100, interest, costs and disbursements." The court says that a receivership being in force and the rights of creditors and third parties having intervened the defendant cannot escape the liability imposed by the Constitution (Art. 10, § 3) on stockholders in a corporation by asserting that the sale of stock to him violated a penal statute. Marin vs. Olson, 232 N. W. 523. Mart M. Monaghan, of Minneapolis, for appellant. Timerman & Vennum, of Minneapolis, for respondent.

Hardship attending so-called stockholder's constitutional double liability. In THE CORPORATION JOURNAL for October, 1929, page 8, was digested Johnson vs. Christlieb, 225 N. W. 927, wherein it was held, not unnaturally perhaps, that a director of a corporation is presumed to know of what corporation he is a director. In the instant case, which is distinguished from the one just mentioned, it is determined that one is not necessarily a stockholder of a corporation whose books and records show him to be such and that allowing his name to appear on the books for many years and the receipt of dividends does not estop him from asserting that he is not a stockholder. As a matter of fact the defendant did not know of the company of which he was recorded as a stockholder until bankruptcy intervened, a receiver was named, and the rights of creditors attached. In an action against him

by the receiver on account of his double liability as a stockholder he prevailed below and the Supreme Court of Minnesota affirms. Of the foregoing—no more. But the court says: "This is the so-called stockholder's constitutional double liability. Minnesota is almost alone in imposing it. (Constitution Article 10, § 3.) Its hardship was recognized in MacLaren v. Wold, 210 N. W. 29, where the stockholders of a cooperative association were subjected to grievous liability without much apparent good to others; but all this does not permit anything but a fair finding upon the question whether one is in fact a stockholder." Johnson vs. Freid, 232 N. W. 519. Chester W. Johnson, of Minneapolis, for appellant. Herbert H. Hoar, of Glenwood, and Catherwood, Hughes & Alderson, of Austin, for respondent.

So-called double liability of stockholders eliminated. By vote in November the people of Minnesota adopted the proposed amendment to the state Constitution (Article 10, Section 3) by which amendment the so-called double liability of stockholders of certain business corporations as heretofore provided for by the Constitution is done away with, the Legislature being empowered to provide for such liability as it may determine, from time to time, to be advisable. As the Legislature has already provided in the general corporation law (§ 7465 of the General Statutes) that a stockholder shall be personally liable for corporate debts, inter alia, "For all unpaid installments on stock owned by him or transferred for the purpose of defrauding creditors," the matter adjusts itself automatically, for present standpoint purposes.

New York.

Brokers having innocently sold stolen bearer bonds and having repossessed such by replacement since former were not good delivery under Exchange rules thus became holders in due course. Brokers sold for customers certain bearer bonds without knowledge that such had been stolen as was the case. On disclosure of the fact of theft the brokers, complying with the rule of the New York Stock Exchange, replaced the stolen bonds with others of like kind thus making a good delivery, repossessing the former. The owners of the stolen bonds were insured against theft; the insurance companies having paid the losses became subrogated to the rights of the true owners and claimed title to the bonds as against the brokers. Action is by the brokers against the insurance companies to establish and to clear title. Plaintiffs prevailed below they being declared to be the true and lawful owners of the bonds. The New York Court of Appeals affirms, saying: "We are inclined to the view that the plaintiffs in this case were not liable for conversion, when in behalf of an apparently honest customer with whom they had had past dealings, and without any cause whatever for suspicion, they sold for his account negotiable corporate bonds payable to bearer. This being so, the plaintiffs, upon reacquiring the stolen bonds for value, became holders in due course and owners thereof." Gruntal et al. vs. National Surety Co. et al., decided Nov. 18, 1930, *New York Law Journal*, Dec. 6, 1930. Stewart Maurice and

it's not worth

Notices from state officials of taxes due, or reports to be filed, often look to a corporation employe more like circular matter than the important documents they are. And some corporation employes, if pressed at the time by important sales, production or administrative matters, throw them lightly aside without realizing their character. Then some day the corporation finds itself liable to a heavy penalty by the state for having failed to observe some state requirement, or with a judgment rendered against it by default for having failed to answer summons in a suit.

A Western corporation has a $56,000.00 penalty staring it in the face in one state in which it is qualified as a foreign corporation, because of its neglect to file a certain report. Notice of this report's being due was mailed to the statutory agent in the state, but that agent does not now remember ever to have seen any such notice. The agent in question was a securities salesman, engaged in selling the company's stock, and was appointed as statutory agent because his services would cost the company nothing.

A few years ago, The C... ation Trust Company ... for the attorneys of a la... tor manufacturing compa... company's statutory re... tation in the various st... which it was qualified, ... company's officials had fo... insisted on the appoint... of its statutory agents, and ... neys about the situation. ... igat... of the company's repres... as ous state records, one ... dead been discharged from ... pany's years, and his address ... an... from the addresses at wh... we... state records. Here ... s... and no opportunities for ... rose... tion was corrected, but ... bilit... stances are aptly illustr... the ...

A rubber company, to save expense in qualifying in a certain Western state, had its sales manager in that state appointed statutory agent. He left the company's employ about a year later to go with one of its bitterest competitors, and for six years no one thought to have the corporation's statutory representation taken out of his name on the state's records. That during those six years no injurious results came from such an unbusinesslike situation, is a matter of good luck alone.

A lumber company, ... 's sa... own employes to be named ... tory... Its employe was after... ...rged... about having his name ... sta... state's records. The compa... ...ed, ... was naturally made on the ... sta... case the discharged and ... em... as was to be expected, ... the... or attorneys. Judgment by ... con... against the company when ... ...ame... of the corporation's attor... ...succ... case re-opened.

the risk!

The desire of some corporation officials to have business employes of the company named as statutory agents in states where the company is qualified, is based on a lack of appreciation of how important financial interests of the company sometimes fall completely and without warning on the shoulders of such agents. More and more are corporation lawyers coming to the realization that their highest duty to the client lies in resistance to the idea of haphazard layman-representation. Put the corporate representation of your clients in the hands of a trained, carefully systematized, perpetually-functioning organization—The Corporation Trust Company—and take no chances.

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succeeded in getting the

Murray D. Welch, for appellant. Harold Nathan and D. William Leider, for respondents.

Pennsylvania.

Rights of minority stockholder in case of sale by corporation of its assets. Suit was brought by a minority stockholder of a corporation to restrain it from selling its assets "because the stockholders' meeting was not advertised for sixty days." The Supreme Court of Pennsylvania affirms the order of the court below dismissing the bill. In the opinion below which the Supreme Court adopts it is stated that "There is no allegation here of fraud, and we may add no allegation of any violation of the company's by-laws." Here a sale of assets only is involved rather than a sale of assets and franchises to another corporation and the dissolution of the selling corporation. The bulk sales law may not be invoked since that is a part of the fiscal system of the state, merely; the statute does not invalidate such sales; there is no question of unpaid taxes. The court quotes from Halpern vs. Grabosky, 296 Pa. 108, 145 A. 834, as follows: "the minority interest of a stockholder cannot prevent a sale, even in a solvent corporation, unless there is fraud or collusion, and this is so though no notice be given him of such sale." It is said here: "Finally, it is difficult to see how plaintiff can be harmed by the proposed sale since she cannot be compelled to accept anything but cash for her property. * * * This court will, if plaintiff desires, make an order providing that plaintiff be protected by a bond sufficient to secure to her payment in cash for her stock at a just valuation." Ringler vs. Atlas Portland Cement Co., et al., 151 A. 815. Paxson Deeter, of Philadelphia, for appellant. Henry S. Drinker, Jr., Philip Wallis, and Dickson, Beitler & McCouch, all of Philadelphia, for Atlas Portland Cement Co. Morgan, Lewis & Bockius, of Philadelphia, for Fidelity-Philadelphia Trust Co.

West Virginia.

Facsimile signatures on stock certificates; Uniform Stock Transfer Act. The 1930 session of the West Virginia Legislature adopted a revised Code, effective on and after January 1, 1931. The first paragraph of Section 37 of Article 1 of Chapter 31 authorizes the use of facsimile signatures on stock certificates. Sections 41 to 62, both inclusive, of Article 1 of Chapter 31 of the new Code embody the Uniform Stock Transfer Act, slightly modified.

Foreign Corporations

Alabama.

Foreign corporation engaged in interstate commerce only in state may not be sued in state courts on contract or in tort arising in another state. Here a German steamship company was sued in an Alabama state court on a cause of action arising out of a tort al-

leged to have been committed in Florida waters by one of its ships. Suit was commenced by attachment, one of defendant's ships having entered an Alabama port. Writ of attachment was issued and levy of attachment on the ship followed. The cause was removed to the United States District Court, S. D. Alabama, S. D., which, defendant appearing specially, granted the motion to quash the writ and levy. Section 5681 of the Alabama Code reads as follows: "Whenever, either by common law or the statutes of another state, a cause of action, either upon contract, or in tort, has arisen in such other state against any person or corporation, such cause of action shall be enforcible in the courts of this state, in any county in which jurisdiction of the defendant can be legally obtained in the same manner in which jurisdiction could have been obtained if the cause of action had arisen in this state." The court says: "So far as the statute undertakes to make or has the effect of making the property of an alien or foreign corporation, that comes into this state in interstate or foreign commerce, liable for debts created or torts committed in other states, it is in conflict with the commerce clause of the United States [Constitution] and void." Louisville & N. R. Co. vs. Deutsche Dampfschifffarts-Gesellschaft, 43 F. (2d) 651. Smith & Johnston, of Mobile, for plaintiff. Pillans, Cowley & Gresham, of Mobile, for defendant.

Iowa.

Filling from without the state of salesmen orders accepted without the state does not constitute "doing business" in state. The plaintiff-appellant here is a Wisconsin corporation, not licensed to do business in Iowa. Action is to recover the purchase price of goods sold by it to an Iowa customer. The Supreme Court of Iowa reverses the directed verdict below for the defendant because of the refusal of that court to admit parol evidence that the signed orders were in fact accepted without the state, such not becoming binding contracts until such acceptance. The court says: "It is contended that the appellant cannot recover because it is a foreign corporation and that the record fails to show that the appellant has a permit to do business in the state of Iowa, as required by section 8427 of the Code. If the appellant could show, as it attempted to do, that the orders in question were solicited and obtained in the state of Iowa, and were sent to the state of Wisconsin and were there accepted by the appellant, and that the goods in question were shipped to the appellee from the state of Wisconsin in pursuance of such acceptance had in the latter state, such a transaction would not constitute a contract made in this state as contemplated by Code, § 8427." Anderson Bros. & Johnson Co. vs. Sioux Monument Co. et al., 232 N. W. 689. George E. McKnight and Stason & Knoepfler, all of Sioux City, for appellant. George H. Bliven and S. W. McKinley, Jr., both of Sioux City, for appellees.

New Hampshire.

Suit by selectmen of town against a foreign corporation in assumpsit for assessed taxes will lie. Defendant here is a Massa-

chusetts corporation duly qualified to do business in New Hampshire. Suit was brought against it by the selectmen of a New Hampshire town to recover taxes assessed against it over a period of years, service of summons being made on the Secretary of State as provided by the statute. It was contended "that taxes assessed on the property of nonresidents are a charge against the taxed estate only, and not a personal charge against the owner, and that if a tax is legally assessed against a nonresident defendant, a lien is created upon the property taxed, and that such tax must be collected, if at all, by a sale of the property." The Supreme Court of New Hampshire (Rockingham), answering a question transferred to it by the Superior Court, calls attention to Public Laws of 1926, C. 66, § 42, wherein it is provided that "The selectmen of any town, or the tax collector, by action brought in the name of the collector, may cause any tax to be collected by suit at law or bill in equity," and says that the obvious purpose of the act is to place the collection of taxes on the same basis as the enforcement of any other right and that the suit may be maintained against the defendant. Nottingham vs. Newmarket Mfg. Co., 151 A. 709. George R. Scammon, of Exeter, for plaintiff. Allen Hollis and Donald Knowlton, both of Concord, for defendant.

Taxation

Illinois.

Franchise tax on foreign corporations was held to be un-constitutional in St. Louis Southwestern Railway Co. vs. Emmerson, Secretary of State of Illinois, by the United States Circuit Court of Appeals, Seventh Circuit, reversing the decree of District Judge Fitz-Henry dismissing the bill and dissolving the restraining order theretofore entered by him, on motion heard and granted by him sitting alone (27 Fed. (2d) 1005; C. C. A. 30 Fed. (2d) 322; THE CORPORATION JOURNAL for December, 1928, page 307, and for March, 1929, page 378). Appeal was then taken to the United States Supreme Court which court on November 24, 1930 (sub nom. Stratton vs. St. L. Sw. Ry. Co., Docket No. 6.—October Term, 1930) reverses the decree of the Circuit Court and remands the cause to the Circuit Court with directions to dismiss the appeal to that court for want of jurisdiction. Failure of the District Court Judge to call to his assistance two other judges to hear the application for an interlocutory injunction and thus to create a three-judge court is the reason; sitting alone he had no jurisdiction to hear the motion to dismiss the bill on the merits and the Circuit Court was without jurisdiction to entertain an appeal from his decree. The Supreme Court says that it is not necessary that formal application should be made for a writ of mandamus to require the District Judge to call to his assistance two other judges to hear the application for an interlocutory injunction "as the District Judge may now proceed to take the action which the writ, if issued, would require." (51 S. Ct. 8.)

Kentucky.

Stockholders personal property taxes on their shares. On November 24, 1930, the United States Supreme Court affirmed the judgment of the Kentucky Court of Appeals in Klein vs. Board of Tax Supervisors of Jefferson County, Kentucky (230 Ky. 182, 18 S. W. (2d) 1009; U. S. Sup. Ct. Docket No. 11, October Term, 1930). A digest of the decision below appearing in THE CORPORATION JOURNAL for November, 1929 (page 43) reads as follows: "The Kentucky statutes provide for the imposition of personal property taxes against the holders of shares in a corporation on account of such stock unless the corporation itself pays taxes on all of its property in Kentucky and such Kentucky property represents 75 per cent or more of its total property in which case the stockholders need not list their shares for personal property tax purposes. The appellant shareholder, here, seeking relief from an assessment on his shares, contended that the taxing statute referred to above is invalid because violating the uniformity provision of the state constitution and because it denies to him the equal protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution. He also protested, as unwarranted, the $95 per share valuation placed on his stock, such being the approximate full market value or selling price as of assessment day, whereas realty was equalized for assessment purposes by his county board at 70 per cent of the average sale value in voluntary sales. The Court of Appeals of Kentucky sustains the assessment holding that there is authority and justification for the classification (shareholders of some corporations being subjected to tax on account of their stock while shareholders of other corporations are not liable to tax on their holdings therein), that there is uniformity within the class, that there is no inhibited denial of equal protection, and that there is no valid basis for complaint because of the value placed on the stock, real estate being differently valued, since there is no gross inequality or unreasonable discrimination and since all intangible property is equalized on the same basis, uniformly, it not being affected by local conditions, by the State board, whereas realty is locally equalized by county boards with respective local conditions in mind." (51 S. Ct. 15.)

Michigan.

Corporation extending corporate existence required to pay annual franchise tax as well as renewal organization fee. The plaintiff-corporation's corporate existence ended May 26, 1929; it took the steps necessary to extend its corporate life for another thirty years. "Plaintiff claims it is entitled to be treated as a new corporation and that it should only pay the fees required upon the organization of a new corporation. Defendant contends plaintiff should pay the annual franchise fee and the additional fees on the extension of its corporate life." The Supreme Court of Michigan, denying mandamus, and so sustaining the finding of the Corporation Tax Appeal Board, says that it is of the belief that the intention of the present legislation is that a corporation extending or renewing its corporate existence shall pay the

regular organization fee such as a new corporation just organizing would be compelled to pay, and in addition the annual franchise tax for the privilege of exercising its franchise and of transacting its business within the state. "The effect of Act. No. 84, and of Act. No. 85, Public Acts 1921, as amended [1927 and 1929], when construed together is to compel a corporation extending its corporate existence to pay a franchise tax to be a corporation as well as a franchise fee for transacting its business in the state as a corporation." Cobbs & Mitchell, Inc. vs. Corporation Tax Appeal Board, decided December 2, 1930 (not yet officially reported). Commerce Clearing House Court Decisions Reporting Service, Requisition No. 31081.

North Carolina.

License tax on wholesale dealers in meat packing house products operating a cold storage warehouse held valid. Section 135 of Chapter 345 (The Revenue Act) of the North Carolina Laws of 1929 provides that each wholesale dealer in meat packing house products who owns, leases, or rents and operates a cold storage warehouse in connection with such wholesale business shall procure a license for the privilege of conducting his business paying therefor $150 for each county in which is located such a cold storage warehouse and for each such warehouse. The plaintiff appellant is a North Carolina corporation engaging in selling grain, hay, meat, and all kinds and classes of groceries at wholesale. It operates a cold storage chamber, warehouse, or refrigerating room in which to preserve fresh meat dealt in by it. A license tax of $150 was demanded. Plaintiff questioned the constitutionality of the taxing provision. The Supreme Court of North Carolina, affirming the judgment below, upholding the statute, says that the power of the state to classify for the purposes of taxation is flexible and that if a particular classification is reasonable and there is equality of burden on all in the same class a license tax is permitted. After referring to certain other sustained classifications the court says that "it would appear that a wholesale dealer in meat products who also operates a refrigerating room for the care and preservation of fresh meats would also be subject to classification." Southern Grain & Provision Co. vs. Maxwell, Revenue Com., 155 S. E. 557. Connor & Hill, of Wilson, for appellant. D. G. Brummitt, Atty. Gen., and Frank Nash, Asst. Atty. Gen. for appellee.

Pennsylvania.

Building houses is not "manufacturing" within meaning of statutory tax exemption provision. The Pennsylvania statutes provide for the exemption from capital stock tax of the capital stock of corporations organized for manufacturing purposes which is invested in and actually and exclusively employed in manufacturing within the state. Defendant claimed exemption under the statute which was denied by the commonwealth. Defendant's charter authorized it to manufacture and deal in builders' supplies, material, and equipment, "to manu-

facture buildings and structures therefrom" and to carry on general building construction. During the tax year in question it was engaged in constructing a large number of buildings. "The record fails to disclose that defendant manufactured any portion of the materials entering into its construction contracts." So the question is—"Is the building of houses, without more, manufacturing?" Affirming the judgment of the court below the Supreme Court of Pennsylvania answers the question in the negative. The opinion discusses at some length the meaning, past and present, of the word "manufacturing" used by the Legislature in the taxing statute here involved. Commonwealth vs. Wark Co., 151 A. 786. Geo. Ross Hull (of Snyder, Miller & Hull), of Harrisburg, for appellant. Philip S. Moyer, Dep. Atty. Gen., and Cyrus E. Woods, Atty. Gen., for the Commonwealth.

Double Death Taxes in Respect of Shares of Stock.

When the United States Supreme Court on January 6, 1930, decided Farmers Loan & Trust Company vs. Minnesota, 280 U. S. 204 (THE CORPORATION JOURNAL for February, 1930, page 101), wherein Blackstone vs. Miller, 186 U. S. 189, was overruled and it was held that Minnesota was without power to impose an inheritance tax in respect of Minnesota state and municipal bonds and certificates of indebtedness, registered and bearer, in the estate of a decedent dying a resident of New York, which state had exacted a death transfer tax in respect thereto, language was used in the prevailing, concurring (on special grounds), and dissenting opinions which seems broad enough to warrant the belief that when the analagous question involving shares of stock reaches the Court the decision will be that but one state death tax (except, perhaps, when the stock has a business situs) is to be imposed in respect of shares of stock and that (again except, perhaps, when the stock has a business situs) by the state of which the decedent dies domiciled. In Baldwin vs. Missouri, 281 U. S. 586, decided May 26, 1930, involving credits and so choses in action (bonds, notes, and bank deposits), the result paralleled that reached in the Farmers Loan case. On November 24, 1930, the Court decided Beidler et al. vs. South Carolina Tax Commission (Docket No. 2—October Term, 1930) holding that South Carolina was without power to exact a death tax in respect of open account debts (money advanced and unpaid declared dividends) due by a South Carolina corporation to a stockholder, owning a majority of its stock, who died domiciled in Illinois. The Court was urged by amicus curiae that in deciding the case "it lay down a broad principle applicable to all intangibles and thus once and for all settle the issue." This it did not do. The personnel of the Court has changed since its decisions in Farmers Loan and Baldwin wherein Mr. Justice Stone (he concurred, on special grounds, in Farmers Loan), Mr. Justice Holmes, and Mr. Justice Brandeis—dissented. The decision in the South Carolina case was unanimous, Justices Holmes and Brandeis acquiescing, because of the earlier decisions in the previous term, "without repeating reasoning that did not prevail with the court." The possibility of cases involving stock specifically reaching the court from Arkansas, Kentucky, Minnesota, and Missouri is indicated.

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Application for Permit to Do Business, due on or before February 1.—Domestic and Foreign Corporations.
Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return due on or before March 15 for calendar year or within two months and fifteen days after close of fiscal year.—Domestic and Foreign Corporations.

COLORADO—Annual Report due within 60 days after January 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January—Domestic Corporations.
Return of information at source due on or before March 15.—Domestic and Foreign Corporations making payments of income to any citizen or resident of Delaware aggregating $1,000 or more during 1930.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or about March 1.—Foreign Corporations engaged in manufacturing.
Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.
Gross Retail Sales Tax Report and Payment of Retail Merchants due on or before February 1.—Domestic and Foreign Corporations doing business as retail merchants.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.
Annual Report due on or before February 1.—Domestic Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MASSACHUSETTS—Annual Report of Information at the source for Income Tax purposes due between January 1 and March 1.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at Source due on or before March 1.—Domestic and Foreign Corporations.
Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of capital employed due between January 1 and March 1.—Foreign Corporations.
Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax Report, Real Estate Holding Corporations, Transportation and Transmission Companies due between January 1 and March 1.—Domestic and Foreign Business Corporations. Form 42 C. T., Section 182 of the Tax Law.

NORTH CAROLINA—Income Tax Return and Return of Information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.
Annual Report due during February.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.
Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1.—Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations, and Foreign Corporations having an office or place of business in the United States.
Return of Information of Dividend payments due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.
Annual Report due on or before March 1.—Domestic Corporations.

VIRGINIA—Annual Registration fee due on or before March 1.—Domestic and Foreign Corporations.
Annual Franchise Tax due on or before March 1.—Domestic Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Analysis of Delaware Amendments of 1929. In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.